vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3392 OF 2005

Shri Krishna Mahadeo Saptarshi ... Petitioner

V/s.

Shri Narayanprasad Papalal Dube & Anr. ... Respondents

Mr.S.V. Pitre for Petitioner
Mr.V.S. Gokhale for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 27, 2005**

P.C.:

. The trial Court has dismissed the suit filed by the landlord. One of the grounds on which the eviction was sought by the landlord was that the tenant i.e., the Petitioner herein had made permanent alterations and constructions. An Appeal was filed challenging this order of the trial Court. While the appeal was pending, the landlord preferred an application under section 417 of the Bombay Provincial Municipal Corporations Act being Miscellaneous Application No.44 of 2003. By this Application, the landlord has prayed for an order to permit them from carrying out the requisitions made by the Pune Municipal Corporation under its notice dated 18.10.1999 and 12.11.1999. In reply, the Petitioner i.e., the tenant has contended that such an application

should not be permitted and in any case, it should be stayed till the hearing of the civil appeal is completed. The Court has passed the following order on the application for stay filed by the Petitioner:

> The Application will be decided with main application. The Applicant has filed Affidavit under Order 18 Rule 4 of C.P.C. The Opponent to
> = cross-examine the Applicant.

2. In my view, there is no prejudice caused to the Petitioner at all by this order. The application filed by the landlord being Miscellaneous Application No.44 of 2003 is yet to be heard. The civil Appeal is also pending. The apprehension of the Petitioner is that if the application is allowed he will be foreclosed in contending in the appeal that permanent alterations have not been made by him in the suit premises either with or without the landlord’s consent. In my view, this submission is unjustified. It is made, presuming the application filed by the landlord will be granted. The Petitioner can always oppose the application on merits. In my view, there is no infirmity in the order. Petition rejected.